

EXHIBIT A

FILED

1 CODE: 1750

2 OCT 02 2006

3 RONALD A. LONGTON, JR., CLERK
4 By: Mike
5 DEPUTY

6
7 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
8
9 IN AND FOR THE COUNTY OF WASHOE

10 WORLD BOTANICAL GARDENS,
11 INC., a Nevada corporation,

12 Plaintiff,

13 vs.

14 WALTER WAGNER, LINDA
15 WAGNER, DAN PERKINS, DAVID
ADAMS, RON TOLMAN, JACQUE
TOLMAN, KIM HARRIS, DOUG
HANSEN, JIM MCBETH, DOES I
through X, and ROE ENTITIES
I through X,

Defendants.

Case No. CV05-02079

Dept. No. 6

16 FINDINGS OF FACT, CONCLUSIONS OF LAW,
17 ORDER OF PERMANENT INJUNCTION, AND JUDGMENT

18 On August 17, 18, and 21, this Court conducted a trial on the
19 merits and a hearing on the Orders to Show Cause against Defendants
20 Walter Wagner and Dan Perkins for violations of the Preliminary
21 Injunction and the Permanent Injunction previously entered in this
22 case. Robert W. Story and Robert S. Larsen of Story & Sertic
23 appeared on behalf of Plaintiff World Botanical Gardens, Inc.
24 ("WBGI"). Mark Robinson, Annette Emerson, Preston Michie, Ken
25 Francik, and John Wallace testified for WBGI. Treva J. Hearne of
26 Hager & Hearne appeared on behalf of Defendants Walter Wagner,
27 Linda Wagner, Dan Perkins, Doug Hansen, and Dave Adams. Defendants
28

1 Walter Wagner, Dan Perkins, and Doug Hansen appeared and testified
2 for Defendants.¹

3 After considering the testimony, evidence, and arguments of
4 the parties in the trial on the merits, this Court now enters its
5 Findings of Fact, Conclusions of Law, and Judgment as follows:

6 FINDINGS OF FACT

7 1. WBGI is a Nevada corporation formed on April 21, 2001, and
8 located in Honomu, Hawaii, doing business as a botanical garden.

9 2. As a Nevada corporation, WBGI is governed by a Board of
10 Directors initially formed in December 2002. ...

11 3. Since 2001, World Botanical Gardens, Inc., a Nevada
12 corporation, is the only entity running the business and holding
13 the assets of the botanical garden.

14 4. The entity known as the World Botanical Gardens Joint
15 Venture Partnership does not exist, owns nothing, controls nothing,
16 is not a legal entity in any state or territory in the United
17 States, and does not have any interest in WBGI.

18 5. On August 16, 2003, WBGI held its annual shareholders
19 meeting, at Honomu, Hawaii. WBGI validly elected a Board of
20 Directors, which designated newly elected Board Members Ken Francik
21 as Chairman and Annette Emerson as Secretary-Treasurer.

22 6. In the latter part of 2003, Emerson and Francik spent
23 numerous hours trying to decipher and organize WBGI's business
24 records, which had formerly been kept by Defendant Walter Wagner.
25 Emerson and Francik discovered that Defendant Walter Wagner had
26 diverted funds to his personal accounts, failed to keep proper

27
28 ¹ The Court will issue a separate Order of Contempt relating to the
Order to Show Cause hearing.

1 financial records, and failed to pay employment taxes, failed to
 2 file corporate income tax reports, failed to keep accurate records
 3 of shareholders. Emerson and Francik also discovered the Internal
 4 Revenue Service had placed a lien on WBGI's real property to secure
 5 payment of overdue payroll taxes.

6 7. Upon discovery of Defendant Walter Wagner's malfeasance,
 7 the Board of Directors began to change Defendant Walter Wagner's
 8 role and limit his authority over daily affairs. On December 15,
 9 2003, WBGI and Defendant Walter Wagner entered into an independent
 10 contractor agreement through which Defendant Walter Wagner remained
 11 the Garden Director with limited authority.

12 8. On May 15, 2004, WBGI terminated Defendant Walter Wagner's
 13 independent contractor agreement for cause.

14 9. On or about September 2, 2004, the Board of Directors by
 15 unanimous vote removed Defendant Walter Wagner as a member of
 16 WBGI's Board of Directors and precluded him from acting in any
 17 official capacity. On September 2, 2004, Francik notified Defendant
 18 Walter Wagner that the Board of Directors had removed him from
 19 WBGI's Board.

20 10. On September 13, 2004, eleven days after the Board of
 21 Directors had removed him, Defendant Walter Wagner created a false
 22 set of "bylaws" and a false "corporate resolution". His
 23 unauthorized fictitious documents purportedly reinstated Defendant
 24 Walter Wagner and Defendant Linda Wagner as the sole officers of
 25 WBGI and were designed to place Defendants Walter Wagner and Linda
 26 Wagner and their selected appointees onto WBGI's Board of
 27 Directors. Shortly thereafter, Defendant Walter Wagner filed false
 28 documents with the Secretary of State of the State of Nevada,

1 Department of Corporations, falsely designating Defendant Walter
2 Wagner and Defendant Linda Wagner as WBGI's officers, and placing
3 themselves back on the Board of Directors.

4 11. On September 25, 2004, the WBGI shareholders elected the
5 following Board of Directors: Ken Francik, Chairman and President;
6 Preston Michie, Vice-Chairman and General Counsel; Annette
7 Emmerson, Secretary/Treasurer; Leslie Cobos; Mark Robinson; Don
8 Miller and Gerhilde Uhl.

9 12. There has been no genuine dispute about the authority of
10 the Board of Directors of WBGI to govern and run the business.

11 13. The dispute over control of WBGI has been nothing more
12 than a relentless conspiracy and campaign by Defendant Walter
13 Wagner and the other Remaining Defendants to gain control of WBGI
14 at any cost.

15 14. Despite the results of the September 25, 2004, shareholder
16 election, Defendants Walter Wagner, Dan Perkins, Linda Wagner, Doug
17 Hansen, David Adams (collectively the "Remaining Defendants") and
18 others thereafter conspired to interfere and interfered in WBGI's
19 business affairs in the following ways:

20 a. The Remaining Defendants created a second,
21 unauthorized board of directors, through which the Remaining
22 Defendants and others have caused confusion among the shareholders
23 of WBGI and through which the Remaining Defendants and others have
24 attempted to wrest control of WBGI from the authorized Board of
25 Directors. Defendant Doug Hansen served as the Chairman of the
26 second, unauthorized board of directors during a strategy meeting
27 held on or about July 25, 2005.

28 b. The Remaining Defendants and others improperly and

1 without authority scheduled an unauthorized annual meeting October
 2 22, 2005 at 2:00 PM-the same day as the authorized annual election-
 3 to ratify the sale of real property owned by WBGI, and then
 4 postponed the unauthorized annual election to sometime in early
 5 2006. This unauthorized annual meeting and postponement of this
 6 unauthorized annual election further caused confusion among the
 7 shareholders of WBGI.

8 c. The Remaining Defendants and others published
 9 newsletters which disputed the authority of the WBGI Board of
 10 Directors to hold an annual election on October 22, 2005, which
 11 falsely informed the shareholders that the "authorized" annual
 12 election would be held in early 2006, and which falsely stated that
 13 their unauthorized Board of Directors was in control of WBGI.

14 15. The Remaining Defendants and others attempted to market
 15 and sell real property which belonged to WBGI.

16 16. The Remaining Defendants and others filed improper and
 17 unauthorized corporate documents with the Nevada Secretary of
 18 State, through which unauthorized corporate documents the Remaining
 19 Defendants and others claim to be the authorized directors and
 20 officers of WBGI.

21 17. The Remaining Defendants and others attempted to alter the
 22 signature cards of WBGI at the Bank of Hawaii, causing the Bank of
 23 Hawaii to freeze the WBGI account and to bounce WBGI checks,
 24 damaging WBGI in the amount of at least \$884.00.

25 18. Defendant Walter Wagner, with the advice and consent of
 26 Defendant Doug Hansen, informed Network Solutions, the domain name
 27 registrar and the web-host of the WBGI website, <www.wbgi.com> that
 28 WBGI does not own the website and that ownership of the website is

1 in litigation, twice causing the web-host to close the WBGI
2 website. Closure of the website has caused WBGI to lose significant
3 revenue from tourism and marketing opportunities. Defendant Walter
4 Wagner and Defendant Doug Hansen caused, at a bare minimum,
5 \$11,853.06 in damages to WBGI through closure of the WBGI website
6 through August 17, 2006. Neither Defendant Walter Wagner nor any
7 other of the Remaining Defendants has any interest or ownership of
8 the <www.wbgi.com> website. The Court finds that this calculation
9 does not account for many hours of uncompensated labor contributed
10 by WBGI's Board members to deal with the behavior of the Remaining
11 Defendants.

12 19. The Court finds specifically that the website
13 <www.wbgi.com> is owned exclusively by WBGI under the direction of
14 the Board of Directors.

15 20. The Remaining Defendants and others fraudulently obtained
16 an order from the Eighth Judicial District Court of the State of
17 Nevada, Case Number A508735, without notice to the WBGI Board of
18 Directors and without authority of the WBGI Board of Directors
19 through which Defendant Walter Wagner and others claim to be the
20 authorized board of directors of WBGI.

21 21. The WBGI Board of Directors listed above has directed
22 WBGI's business affairs from September 25, 2004, through October
23 22, 2005, when the shareholders elected a successor Board of
24 Directors.

25 22. From Defendant Walter Wagner's removal through the
26 present, the WBGI Board of Directors has properly managed the
27 business and affairs of WBGI.

28 23. At every opportunity, Defendant Walter Wagner has

1 attempted to paralyze and destroy WBGI - he has frozen the WBGI
2 bank account; he has improperly and illegally recorded a lis
3 pendens against the property of WBGI and its Garden Director, Dr.
4 Lanny Neel; he has trespassed on WBGI property, where he sprayed
5 weed-killer on Garden plants; he has taken over and/or closed
6 WBGI's website, thereby destroying WBGI's internet marketing plan;
7 and he improperly sold interests in WBGI and pocketed the proceeds,
8 thereby depriving WBGI of badly needed capital and defrauding
9 investors.

10 24. The Remaining Defendants knew about all of these actions
11 and ratified and/or participated in them as members of the
12 unauthorized board of directors.

13 25. Transfer of any shares of WBGI stock requires approval of
14 the Board of Directors.

15 26. Defendant Walter Wagner has failed to obtain or even
16 request approval from the Board of Directors to transfer or sell
17 any of his shares of WBGI stock.

18 27. Rather, Defendants Walter Wagner, Dan Perkins, and Linda
19 Wagner have intentionally and illegally engaged in a fraudulent
20 scheme to sell shares of WBGI stock to unsuspecting purchasers.

21 28. Defendants Walter Wagner and Linda Wagner created their
22 own false share certificates that were not authorized share
23 certificates of WBGI.

24 29. Defendants Walter Wagner and Dan Perkins intended to
25 conceal these fraudulent share sales from the Board of Directors.

26 30. These share sales were made with the knowledge and/or
27 participation and/or consent of the Remaining Defendants.

28 31. Defendants Walter Wagner, Dan Perkins, and Linda Wagner

1 have also sold shares in an entity known as the World Botanical
2 Gardens Foundation, but which were represented to potential
3 purchasers as being shares of stock in WBGI.

4 32. The World Botanical Gardens Foundation is a dba for
5 Defendant Walter Wagner. There is no evidence that it is or acts as
6 a charitable entity. It is not a legal entity and there is no
7 evidence of separate bank accounts or business records or any type
8 of record that would justify its existence beyond a vehicle used by
9 Defendants Walter Wagner and Dan Perkins to perpetrate their
10 fraudulent share transfers.

11 33. There is no evidence of mismanagement of WBGI by its Board
12 of Directors. Rather, the actions of the Remaining Defendants have
13 caused WBGI significant harm and financial damage.

14 34. Defendants Walter Wagner and Dan Perkins have refused to
15 comply with this Court's Orders.

16 35. Defendant Walter Wagner and Defendant Dan Perkins lacked
17 credibility and were generally not believable in their testimony.

18 36. Defendants Walter Wagner and Defendant Dan Perkins were
19 unable to produce any evidence supporting their claims when
20 requested by WBGI or this Court.

21 37. The Remaining Defendants have not complied with any
22 Requests for Production which were served pre-trial in this case.

23 38. WBGI has placed a lis pendens on property owned by
24 Defendant Walter Wagner which arises from a dispute over claims of
25 embezzlement currently being litigated in Hawaii. Absent any
26 evidence presented to the Hawaii court to support this lis pendens,
27 WBGI is directed to remove such lis pendens from Defendant Walter
28 Wagner's property.

The findings of fact from the Order of Contempt are hereby incorporated in these findings of fact.

CONCLUSIONS OF LAW

1. The WBGI Board of Directors, as defined in the findings of fact, and now the successor Board of Directors has full control under NRS 78.120 of the affairs of WBGI.

2. The removal of Defendant Walter Wagner from the WBGI Board of Directors was proper; and the subsequent elections by WBGI shareholders validated Defendant Walter Wagner's removal from the WBGI Board of Directors.

3. The second, unauthorized board of directors created by the Remaining Defendants was not a proper board of directors and had no authority to act in any capacity on behalf of WBGI.

4. Any entity known as the World Botanical Gardens Joint Venture Partnership does not exist and has no legal authority to conduct any business of any nature.

- 5. Any entity known as the World Botanical Gardens Foundation does not exist and does not engage in charitable activities, but is merely a dba for Defendant Walter Wagner.

6. The conclusions of law from the Order of Contempt are hereby incorporated in these conclusions of law.

ORDER OF PERMANENT INJUNCTION

IT IS HEREBY ORDERED that Defendants Dan Perkins, Linda Wagner, Doug Hansen, and David Adams and their agents, servants, employees, affiliates, successors, assigns, and those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service, facsimile, or otherwise are hereby permanently enjoined from the following

actions:

(1) Participating in and/or creating an alternate board of directors for WBGI; informing shareholders of WBGI or anyone else that the WBGI Board of Directors is not authorized to call annual elections or conduct the affairs of WBGI; publishing any further newsletters, correspondence, any internet site (including but not limited to the websites <www.wbgi.com>, <www.worldbotanicalgardensincorporated.com>, and <www.worldbotanicalgardensfoundation.org>), or publishing any other communication containing any information that disputes the authority of the WBGI Board of Directors to conduct the affairs of WBGI or disputes the authority of the WBGI Board of Directors to hold the annual elections. Defendants Dan Perkins, Linda Wagner, Doug Hansen, and David Adams are free, however, to participate in elections, as shareholders, to the extent of their ownership interest and to dispute the results of such election as provided by and in accordance with Nevada law;

(2) Interfering with WBGI's business affairs;

(3) Marketing or selling any real or personal property owned by WBGI;

(4) Filing any corporate documents with the Nevada Secretary of State concerning WBGI;

(5) Altering or attempting to alter the signature cards of WBGI at the Bank of Hawaii or otherwise interfering with the bank accounts or other financial affairs of WBGI;

(6) Using the order from the Eighth Judicial District Court of the State of Nevada to suggest that the WBGI Board of Directors is not the authorized Board of Directors or that Defendants Walter

1 Wagner, Linda Wagner, Dan Perkins, Dave Adams, Doug Hansen and/or
2 others are the authorized board of directors and/or officers of
3 WBGI for any purpose;

4 (7) Informing the WBGI domain name registrar or web-host that
5 WBGI does not own the <www.wbgi.com> website or from otherwise
6 interfering with the WBGI web page;

7 (8) Using the name World Botanical Gardens or WBGI's
8 trademarks, common law trademarks, or trade names, including any
9 mark or name likely to cause confusion among investors, customers,
10 or the public at large, or any representation that they are
11 officers, directors, agents for, or otherwise in control of WBGI in
12 any website, domain name, or email address owned, registered, or
13 controlled by them, including but not limited to the websites
14 <www.worldbotanicalgardensincorporated.com> and
15 <www.worldbotanicalgardensfoundation.org> and the email address
16 suffix of <wbgi.com>, or any similar website, domain name, or email
17 address; and

18 (9) Selling, transferring, alienating or marketing, directly
19 or indirectly, through any manner or means, any WBGI shares of
20 stock or any interest in WBGI or World Botanical Gardens, including
21 stock owned by them or their designees without express written WBGI
22 Board of Directors approval.

23 IT IS HEREBY FURTHER ORDERED that Defendants Dan Perkins,
24 Linda Wagner, Doug Hansen, and David Adams are enjoined from
25 instructing, aiding, or causing any other person, firm,
26 partnership, entity, or corporation to do anything this Order for
27 Permanent Injunction prohibits them from doing.

28 The Court shall be notified by counsel within 24 hours of any

1 violation of this Permanent Injunction, however slight.

2 **JUDGMENT**

3 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants
4 Walter Wagner and Doug Hansen are jointly and severally liable to
5 WBGI in the amount of \$12,737.06 together with post judgment
6 interest at the legal rate for damages they cause WBGI by freezing
7 the WBGI bank account and closing the WBGI website.

8

9 *Brent Adams*

10 _____ DISTRICT JUDGE

11 DATED: *October* 2, 2006